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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. *20 13- 985*

12 **VINCENT JULIUS BAIERA,**
13 **aka VINCENT BAIERA**
2907 Hickory Street
14 Clinton, OH 44216

ACCUSATION

15 Registered Nurse License No. 765230

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
22 Department of Consumer Affairs.

23 2. On or about January 11, 2010, the Board issued Registered Nurse License Number
24 765230 to Vincent Julius Baiera, also known as Vincent Baiera ("Respondent"). Respondent's
25 registered nurse license was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 2013, unless renewed.

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28 ///

STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof, . . .

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self administration of any of the substances described in subdivisions
3 (a) and (b) of this section, or the possession of, or falsification of a record pertaining
4 to, the substances described in subdivision (a) of this section, in which event the
5 record of the conviction is conclusive evidence thereof . . .

6 7. Code section 2765 states:

7 A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere made to a charge substantially related to the qualifications, functions and
9 duties of a registered nurse is deemed to be a conviction within the meaning of this
10 article. The board may order the license or certificate suspended or revoked, or may
11 decline to issue a license or certificate, when the time for appeal has elapsed, or the
12 judgment of conviction has been affirmed on appeal or when an order granting
13 probation is made suspending the imposition of sentence, irrespective of a subsequent
14 order under the provisions of Section 1203.4 of the Penal Code allowing such person
15 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
16 the verdict of guilty, or dismissing the accusation, information or indictment.

17 8. Code section 490, subdivision (a), states:

18 In addition to any other action that a board is permitted to take against a
19 licensee, a board may suspend or revoke a license on the ground that the licensee has
20 been convicted of a crime, if the crime is substantially related to the qualifications,
21 functions, or duties of the business or profession for which the license was issued.

22 COST RECOVERY

23 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
27 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
28 included in a stipulated settlement.

29 FIRST CAUSE FOR DISCIPLINE

30 (Criminal Conviction)

31 10. Respondent is subject to disciplinary action pursuant to Code sections 2761,
32 subdivision (f), and 490, subdivision (a), in that on or about June 9, 2011, in Clark County,
33 Nevada, Justice Court, Case No. 10M09880X, Respondent pled nolo contendere to violating NRS
34 484C.110, 484C.400 (driving and/or being in actual physical control while under the influence of

intoxicating liquor), a misdemeanor, a crime substantially related to the qualifications, functions, and duties of a registered nurse.

SECOND CAUSE FOR DISCIPLINE

(Disciplinary Action against Health Care Professional License by another State)

11. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(4), on the grounds of unprofessional conduct, in that he was disciplined by the State of West Virginia Board of Examiners for Registered Professional Nurses ("West Virginia Board"), the Ohio Board of Nursing ("Ohio Board"), and the North Carolina Board of Nursing ("North Carolina Board"), as follows:

a. On or about June 23, 2011, the Disciplinary Review Committee of the West Virginia Board denied Respondent's application for a registered nurse license in that state. A true and correct copy of the Board's letter of denial is attached hereto as **exhibit A** and incorporated herein.

b. On or about November 16, 2012, pursuant to the Adjudication Order in the disciplinary proceeding entitled "In the Matter of: Vincent J. Baiera, R.N.", Case No. 11-003546, the Ohio Board accepted the hearing examiner's Findings of Fact and Conclusions of Law, modified the hearing examiner's Recommendation, and ordered that Respondent's license to practice nursing in Ohio be suspended for an indefinite period of time, but not less than six (6) months. The Board further ordered that following reinstatement, Respondent's license shall be subject to certain probationary terms, conditions, and limitations for a minimum period of two (2) years with temporary practice restrictions. True and correct copies of the Adjudication Order and the related documents are attached hereto as **exhibit B** and incorporated herein. The hearing examiner found, among other things, as follows:

1. On or about January 1, 2008, Respondent was charged with driving under the influence of alcohol in Pittsburgh, Pennsylvania.

2. In or around 2008, in Berea, Ohio, Respondent received a citation for having an open container of alcohol.

///

3. On or about March 25, 2010, Respondent was charged with driving under the influence of intoxicating liquor in Clark County, Nevada. On or about June 9, 2011, Respondent pled "nolo contendere" to the charge (as set forth in paragraph 10 above).

4. In or around February 2011, Respondent spent the night in a Monterey, California jail after being found unconscious, due to drinking alcohol, in a cab.

5. In or around February 2011, Respondent submitted an application for licensure by endorsement to the West Virginia Board. On or about June 23, 2011, the West Virginia Board issued a letter, denying Respondent's application (as set forth in subparagraph (a) above).

6. In a statement to the Ohio Board regarding his status in West Virginia, Respondent indicated that he failed to disclose the alcohol-related incidents to the West Virginia Board on his nursing license application.

c. On or about February 13, 2013, pursuant to the Summary Action Order in the disciplinary proceeding entitled "In the Matter Involving: Vincent Julius Baiera Registered Nurse Certification #229439", the North Carolina Board suspended Respondent's license to practice nursing in North Carolina based on the action taken by the Ohio Board. A true and correct copy of the Summary Action Order is attached hereto as **exhibit C** and incorporated herein.

THIRD CAUSE FOR DISCIPLINE

**(Consumption of Alcoholic Beverages to an Extent or in a Manner
Dangerous or Injurious to Oneself and/or Others)**

12. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (b), in that Respondent consumed alcoholic beverages to an extent or in a manner dangerous or injurious to himself and others, as set forth in subparagraph 11 (b) above.

FOURTH CAUSE FOR DISCIPLINE

(Conviction of a Crime Involving the Consumption of Alcoholic Beverages)

13. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,

subdivision (c), in that on or about June 9, 2011, Respondent was convicted of a criminal offense involving the consumption of alcoholic beverages, as set forth in paragraph 10 above.

PRAYER

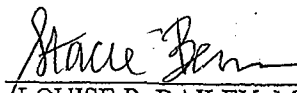
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 765230, issued to Vincent Julius Baiera, also known as Vincent Baiera;

2. Ordering Vincent Julius Baiera, also known as Vincent Baiera, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: April 29, 2013


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

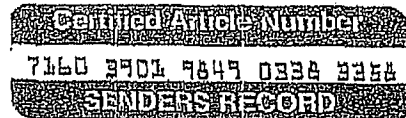
SA2012107454
11065735

EXHIBIT A

Letter of Denial, West Virginia Board

Executive Director

email: mboard@state.wv.us
web address: www.wvrbboard.com



FAX (304) 558-3686

STATE OF WEST VIRGINIA
BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES
101 Dee Drive, Suite 102
Charleston, WV 25311-1620

June 23, 2011

Vincent Baiera

Through His Attorney

Toby J. Buell
Neely & Callaghan
Lawyers
159 Summers Street
Charleston, WV 25301-2134

Re: Endorsement Application
Social Security Number: [REDACTED]

Dear Mr. Baiera:

After thoroughly reviewing all available information, the Disciplinary Review Committee (DRC) of the West Virginia Board of Examiners for Registered Professional Nurses (Board) maintains its position to deny your application. The DRC determined you may re-apply after one (1) year of documented sobriety including records from your health care providers supporting your sobriety and proof of negative random urine drugs screens.

For your options please review the Board's law found in WV Code § 30-7-1 et seq., the State Administrative Procedures Act found in WV Code § 29A-5-1 et. seq., the Contested Case Hearing Procedure in WV CSR § 19-5-1, and any other applicable laws and rules.

Sincerely,

Alice R. Faucett, JD
General Counsel and Director of Discipline

xc: File

EXHIBIT B

Adjudication Order, Ohio Board



Ohio Board of Nursing

www.nursing.ohio.gov

17 South High Street, Suite 400 • Columbus, Ohio 43215-7410 • (614) 466-3947

BEFORE THE OHIO BOARD OF NURSING

IN THE MATTER OF:

CASE #11-003546

VINCENT J. BAIERA, R.N.

ADJUDICATION ORDER

This matter came for consideration before the Ohio Board of Nursing (hereinafter "Board") on November 16, 2012. At such time the Board verified that it reviewed the following materials prior to consideration of this matter:

Hearing Transcript; State's Exhibits; Respondent's Exhibits; the Hearing Examiner's Report and Recommendation; and Respondent's Objections to the Report and Recommendation.

Beth A. Lewis was the Hearing Examiner designated in this matter pursuant to Section 119.09, Ohio Revised Code (ORC). *A true copy of the Report and Recommendation of Beth A. Lewis is attached hereto and incorporated herein.*

On this date, the Board accepted all of the Findings of Fact and Conclusions of Law of the Hearing Examiner, and modified the Recommendation in the Hearing Examiner's Report and Recommendation, and ordered that VINCENT J. BAIERA's license to practice nursing as a registered nurse in the State of Ohio be suspended for an indefinite period of time but not less than six (6) months with the conditions for reinstatement set forth below, and following reinstatement, Mr. Baiera's license to practice nursing as a registered nurse shall be subject to the probationary terms, conditions, and limitations set forth below for a minimum period of two (2) years, with the Temporary Practice Restrictions set forth below.

On this date, the Board further ordered that any period during which Mr. Baiera does not work in a position for which a nursing license is required shall not count toward fulfilling the probationary period imposed by the Board's Order. The rationale for this part of the order is that one purpose of the probationary period is to allow the Board to monitor Mr. Baiera's practice as a registered nurse in an employment setting under the circumstances and stresses existing in that setting with employer feedback. The educational setting proposed by Mr. Baiera involves advanced practice nursing and Mr. Baiera needs to first demonstrate that he can practice nursing safely as a registered nurse.

The rationale for the modification is the following:

CERTIFIED TO BE A TRUE COPY

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OHIO BOARD OF NURSING

Lyndee Records Custodian

The record reflects that Mr. Baiera has an extensive history of issues with alcohol and criminal actions as a result of his alcohol use. The Board in its expertise has determined that a period of suspension is warranted during which time Mr. Baiera will need to obtain a chemical dependency evaluation and demonstrate that he can abstain from alcohol prior to returning to the practice of nursing.

REQUIREMENTS AND CONDITIONS FOR REINSTATEMENT

1. MR. BAIERA shall obey all federal, state, and local laws, and all laws and rules governing the practice of nursing in Ohio.
2. MR. BAIERA shall appear in person for interviews before the full Board or its designated representative as requested by the Board or its designee.
3. Prior to requesting reinstatement by the Board, MR. BAIERA shall submit a request to the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check of MR. BAIERA, including a check of Federal Bureau of Investigation (FBI) records, and shall cause BCII to submit MR. BAIERA's criminal records check reports to the Board. A request for reinstatement will not be considered by the Board until the completed criminal records check, including the FBI check, has been received by the Board.

Monitoring

4. MR. BAIERA shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of MR. BAIERA's history. MR. BAIERA shall self-administer the prescribed drugs only in the manner prescribed.
5. MR. BAIERA shall abstain completely from the use of alcohol or any products containing alcohol.
6. Prior to requesting reinstatement by the Board, MR. BAIERA shall, at his own expense, obtain a chemical dependency evaluation by a Board approved chemical dependency professional and shall provide the Board with complete documentation of this evaluation. Prior to the evaluation, MR. BAIERA shall provide the chemical dependency professional with a copy of this Order and Notice of Opportunity for Hearing. Further, MR. BAIERA shall execute releases to permit the chemical dependency professional to obtain any information deemed appropriate and necessary for the evaluation. The chemical dependency professional shall submit a written opinion to the Board that includes diagnoses, recommendations for treatment and monitoring, any additional restrictions that should be placed on MR. BAIERA's license, and a statement as to whether MR. BAIERA is capable of practicing nursing according to acceptable and prevailing standards of safe nursing care.

7. MR. BAIERA shall provide the Board with satisfactory documentation of compliance with all aspects of the treatment plan developed by the chemical dependency professional described above until released. Further, the Board may utilize the professional's recommendations and conclusions from the evaluation as a basis for additional terms, conditions, and limitations on MR. BAIERA's license.
8. For a minimum, continuous period of six (6) months immediately prior to requesting reinstatement, MR. BAIERA shall submit, at his expense and on the day selected, blood or urine specimens for drug and/or alcohol analysis at a collection site specified by the Board at such times as the Board may request. Upon and after MR. BAIERA's initiation of drug screening, refusal to submit such specimen, or failure to submit such specimen on the day he is selected, or in such a manner as the Board may request, shall constitute a violation of a restriction placed on a license for purposes of Section 4723.28(B), ORC. This screening shall require a daily call-in process. The specimens submitted by MR. BAIERA shall be negative, except for substances prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of MR. BAIERA's history.
9. Within thirty (30) days prior to MR. BAIERA initiating drug screening, MR. BAIERA shall provide a copy of this Order to all treating practitioners and shall provide to the Board a list of all treating practitioners, including addresses and telephone numbers and cause all treating practitioners to complete a medication prescription report that is to be mailed by the practitioner directly to the Board. The medication report is to be completed for any and all substances prescribed, administered, or dispensed to MR. BAIERA.
10. After initiating drug screening, MR. BAIERA shall be under a continuing duty to provide a copy of this Order, prior to initiating treatment, to additional treating practitioners, and to update the list of treating practitioners with the Board within forty-eight (48) hours of being treated by another practitioner. Further, MR. BAIERA shall notify the Board of any and all medication(s) or prescription(s) received within twenty-four (24) hours of release from hospitalization or medical treatment.
11. For a minimum, continuous period of six (6) months immediately prior to requesting reinstatement, MR. BAIERA shall attend a minimum of one (1) meeting per week of a support or peer group meeting approved in advance by the Board, or a Twelve Step program, and MR. BAIERA shall provide satisfactory documentation of such attendance to the Board prior to reinstatement.

Reporting Requirements of MR. BAIERA

12. MR. BAIERA shall sign release of information forms allowing health professionals and other organizations to submit requested documentation or information directly to the Board.

13. MR. BAIERA shall submit any and all information that the Board may request regarding his ability to practice according to acceptable and prevailing standards of safe nursing practice.
14. MR. BAIERA shall not submit or cause to be submitted any false, misleading, or deceptive statements, information, or documentation to the Board or to employers or potential employers.
15. MR. BAIERA shall submit the reports and documentation required by this Order on forms specified by the Board. All reporting and communications required by this Order shall be made to the Compliance Unit of the Board.
16. MR. BAIERA shall submit the reports and documentation required by this Order to the attention of the Compliance Unit, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410.
17. MR. BAIERA shall verify that the reports and documentation required by this Order are received in the Board office.
18. MR. BAIERA shall inform the Board within three (3) business days, in writing, of any change in address and/or telephone number.

DURATION

The Board may only alter the indefinite suspension imposed if: (1) MR. BAIERA submits a written request for reinstatement; (2) the Board determines that MR. BAIERA has complied with all conditions of reinstatement; and (3) the Board determines that MR. BAIERA is able to practice according to acceptable and prevailing standards of safe nursing care based upon an interview with MR. BAIERA and review of the documentation specified in this Order.

Following reinstatement, MR. BAIERA shall be subject to the following probationary terms, conditions, and limitations for a minimum period of two (2) years.

1. MR. BAIERA shall obey all federal, state, and local laws, and all laws and rules governing the practice of nursing in Ohio.
2. MR. BAIERA shall appear in person for interviews before the full Board or its designated representative as requested by the Board or its designee.

Monitoring

3. MR. BAIERA shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of MR. BAIERA's history. MR. BAIERA shall self-administer prescribed drugs only in the manner prescribed.

4. MR. BAIERA shall abstain completely from the use of alcohol or any products containing alcohol.
5. During the probationary period, MR. BAIERA shall submit, at his expense and on the day selected, blood or urine specimens for drug and/or alcohol analysis at a collection site specified by the Board at such times as the Board may request. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected, or in such a manner as the Board may request; shall constitute a violation of a restriction placed on a license for purposes of Section 4723.28(B), ORC. This screening shall require a daily call-in process. The specimens submitted by MR. BAIERA shall be negative, except for substances prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of MR. BAIERA's history.
6. MR. BAIERA shall attend a minimum of one (1) meeting per week of a support or peer group meeting approved in advance by the Board, or a Twelve Step program, and MR. BAIERA shall provide satisfactory documentation of such attendance to the Board every six (6) months.

Treating Practitioners and Reporting

7. Within sixty (60) days of the execution of the probationary period, MR. BAIERA shall provide a copy of this Order to all treating practitioners and shall provide to the Board a list of all treating practitioners, including addresses and telephone numbers. Further, MR. BAIERA shall be under a continuing duty to provide a copy of this Order, prior to initiating treatment, to additional treating practitioners, and to update the list of treating practitioners with the Board within forty-eight (48) hours of being treated by another practitioner.
8. MR. BAIERA shall cause all treating practitioners to complete a medication prescription report that is to be mailed by the practitioner directly to the Board. The medication report is to be completed for any and all substances prescribed, administered, or dispensed to MR. BAIERA throughout the duration of this Order.
9. Within twenty-four (24) hours of release from hospitalization or medical treatment, MR. BAIERA shall notify the Board of any and all medication(s) or prescription(s) received.

Employment Conditions

10. Prior to accepting employment as a nurse, each time with every employer, MR. BAIERA shall notify the Board, in writing.
11. MR. BAIERA is under a continuing duty to provide a copy of this Order and Notice of Opportunity for Hearing to any new employer prior to accepting nursing employment. MR. BAIERA shall have his employer(s), if working in a position where a nursing license is required, submit written reports regarding job performance on a quarterly basis beginning within thirty (30) days of accepting nursing employment. MR. BAIERA

shall have his employer(s) send documentation to the Board, along with the first employer report, of receipt of a copy of this Order and Notice of Opportunity for Hearing, including the date they were received.

Reporting Requirements of MR. BAIERA

12. MR. BAIERA shall sign releases of information forms allowing health professionals and other organizations to submit the requested documentation directly to the Board.
13. MR. BAIERA shall submit any and all information that the Board may request regarding his ability to practice according to acceptable and prevailing standards of safe nursing practice.
14. MR. BAIERA shall not submit or cause to be submitted any false, misleading, or deceptive statements, information, or documentation to the Board or to employers or potential employers.
15. MR. BAIERA shall submit the reports and documentation required by this Order on forms specified by the Board. All reporting and communications required by this Order shall be made to the Compliance Unit of the Board.
16. MR. BAIERA shall submit the reports and documentation required by this Order or any other documents required by the Board to the attention of the Compliance Unit, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410.
17. MR. BAIERA shall verify that the reports and documentation required by this Order are received in the Board office.
18. MR. BAIERA shall inform the Board within five (5) business days, in writing, of any change in employment status or of any change in residential or home address or telephone number.
19. Prior to working as a nurse, if requested by the Board or its designee, MR. BAIERA shall complete a nurse refresher course or extensive orientation approved in advance by the Board.

Temporary Practice Restrictions

MR. BAIERA shall not practice nursing as a registered nurse (1) for agencies providing home care in the patient's residence; (2) for hospice care programs providing hospice care in the patient's residence; (3) for staffing agencies or pools; (4) as an independent provider where the nurse provides nursing care and is reimbursed for services by the State of Ohio through State agencies or agents of the State; or (5) for an individual or group of individuals who directly engage MR. BAIERA to provide nursing services for fees, compensation, or other consideration or as a volunteer.

MR. BAIERA shall not function in a position or employment where the job duties or requirements involve management of nursing and nursing responsibilities, or supervising and evaluating nursing practice. Such positions include, but are not limited to, the following: Director of Nursing, Assistant Director of Nursing, Nurse Manager, Vice President of Nursing.

FAILURE TO COMPLY

The stay of MR. BAIERA's suspension shall be lifted and MR. BAIERA's license to practice nursing as a registered nurse will be automatically suspended if it appears to the Board that MR. BAIERA has violated or breached any terms or conditions of this Order. Following the automatic suspension, the Board shall notify MR. BAIERA via certified mail of the specific nature of the charges and automatic suspension of his license. Upon receipt of this notice, MR. BAIERA may request a hearing regarding the charges.

DURATION

The Board may only alter the probationary period imposed by this Order if: (1) the Board determines that MR. BAIERA has complied with all aspects of this Order; and (2) the Board determines that MR. BAIERA is able to practice according to acceptable and prevailing standards of safe nursing care without Board monitoring, based upon an interview with MR. BAIERA and review of the reports as required herein. Any period during which MR. BAIERA does not work in a position for which a nursing license is required shall not count toward fulfilling the probationary period imposed by this Order.

This ORDER shall become effective immediately and is hereby entered upon the Journal of the Board for the 16th day of November, 2012.

TIME AND METHOD TO PERFECT AN APPEAL

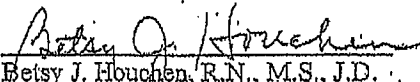
Any party desiring to appeal shall file a Notice of Appeal with the Ohio Board of Nursing, 17 S. High St., Suite 400, Columbus OH 43215-7410, setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal.

A copy of such Notice of Appeal shall also be filed by the appellant with the Franklin County Court of Common Pleas, Columbus, Ohio. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Ohio Board of Nursing's Order as provided in Section 119.12 of the Ohio Revised Code.

CERTIFICATION

The State of Ohio
County of Franklin

I, the undersigned Betsy J. Houchen, Executive Director for the Ohio Board of Nursing, hereby certify that the foregoing is a true and exact reproduction of the original Order of the Ohio Board of Nursing entered on its journal, on the 16th day of November, 2012.


Betsy J. Houchen, R.N., M.S., J.D.
Executive Director


November 16, 2012
Date

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Order, concerning VINCENT J. BAIERA, was sent via certified mail, return receipt requested, this 11th day of December, 2012 to VINCENT J. BAIERA, at 2907 Hickory Street, Clinton, Ohio 44216, and to Respondent's Attorney, James Leo, at 616-B Office Parkway, Westerville, Ohio 43082.

I also certify that a copy of the same was sent via regular U.S. mail this 11th day of December, 2012 to Lamont Pugh, SAC, Sanctions & Exclusions, Department of Health and Human Services, Office of Inspector General, Office of Investigations, P.O. Box 81020, Chicago, IL 60601-81020.


Betsy J. Houchen, R.N., M.S., J.D.
Executive Director

bcmf

cc: Courtney Hagele, Assistant Attorney General

Certified Mail Receipt No. 7012 2210 0000 6270 5885
Attorney Certified Mail Receipt No. 7012 2210 0000 6270 5892

State of Ohio
Board of Nursing
17 South High Street, Suite 400
Columbus, OH 43215-7410

In the Matter of
Vincent J. Balera, R.N.

Respondent

Beth A. Lewis, J.D.
Hearing Examiner

Case No. 11-003546

September 14, 2012
Report and Recommendation.

RECEIVED
OHIO BOARD OF NURSING
2012 SEP 14 PM 3:00

Appearances: For the Ohio State Board of Nursing: Michael DeWine, OHIO ATTORNEY GENERAL, and Courtney L. Hagele, Esq., Health & Human Services Section, 30 East Broad Street, 28th Floor, Columbus, OH 43215-3428. Telephone: 614-466-8600; Fax: 614-466-6090.

For the Licensee/Respondent: James Lee, Esq., 616-B Office Parkway, Westerville, OH 43082. Telephone: 614-260-0648; Fax: 614-539-3917.

Nature of the Case

This is an administrative proceeding under Chapter 119 (the Administrative Procedure Act), and Chapter 4723 (the Nurse Practice Act), of the Ohio Revised Code ("ORC"). The case involves a Notice of Opportunity for Hearing, issued to the Respondent, Vincent J. Balera, R.N. ("Respondent" or "Mr. Balera"), on November 18, 2011. In the notice, the Ohio Board of Nursing ("Board"), informed Mr. Balera that it intended to take disciplinary action against his license based on Mr. Balera's application for licensure by endorsement being denied in the State of West Virginia. (State Exhibit 1.) In the notice sent to Mr. Balera, the Board set forth its reasons for the proposed action, identified the charges against him, and advised Mr. Balera of his right to a hearing. (Id.) Mr. Balera made a timely request for a hearing. (State Exhibits 2, 2a.) The Board appointed me to serve as its Hearing Examiner. A hearing was conducted on May 22, 2012, at which the parties presented their evidence on the charges against Mr. Balera. Mr. Balera was present at the hearing, and was represented by counsel. This report is based on the evidence presented at the hearing.

Summary of the Issues

The Board charged Mr. Baiera with having his Endorsement Application for Licensure to Practice as a Registered Professional Nurse denied by the State of West Virginia Board of Examiners for Registered Professional Nurses ("West Virginia Board"), which is in turn a violation of Section 4723.28(B)(1), ORC. This Section authorizes the Board to discipline a licensee for denial, revocation, suspension, or restriction of authority to practice a health care occupation, including nursing, for any reason other than a failure to renew, in Ohio or another state or jurisdiction. Certified copies of the documents relating to the disciplinary action taken by the West Virginia Board against the Respondent were admitted into evidence by the State. (State Exhibit 1, pp. 3-4.) Mr. Baiera also submitted a statement to the Ohio Board in which he admitted that he did not disclose alcohol-related incidents to the West Virginia Board on his Endorsement Application. (State Exhibit 7, p. 6.)

The Board is required to consider the merits of each case, and may, based upon the circumstances leading to these charges, consider both aggravating and mitigating circumstances shown in the record. From the evidence before me, I find a sufficient basis to conclude that the charges against Mr. Baiera have been proved. The West Virginia Board denied Mr. Baiera's Endorsement Application for Licensure to practice as a registered professional nurse on or about June 23, 2011. (State Exhibit 1, p. 4.) Because I find the evidence establishes a valid basis for disciplinary action, I recommend that Mr. Baiera's license to practice as a registered nurse in Ohio be subject to a stayed suspension and probationary terms, conditions, and limitations as determined by the Board, for a minimum period of two (2) years. My analysis follows.

Evidence Examined

The State presented evidence through the testimony of Respondent Vincent Baiera, as on cross-examination, and Rebecca Green, Board Supervising Attorney. Mr. Baiera also testified on his own behalf. The parties presented evidence in the form of exhibits, identified in the record at page 4 of the transcript of proceedings. All testimony and exhibits admitted in the hearing of the matter, whether or not specifically referred to in this Report, were thoroughly reviewed and considered by the Hearing Examiner prior to the entry of the findings, conclusions, and recommendations shown below.

Summary of the Evidence

In May 2008, Mr. Baiera received his Bachelor's degree in Nursing from the Robert Morris University in Pittsburgh, Pennsylvania. (State Exhibit 5; see Tr., p. 10.) While in college, Mr. Baiera committed several alcohol-related infractions. First, on January 1, 2008, Mr. Baiera was charged with Driving Under the Influence of alcohol ("DUI") in Pittsburgh, Pennsylvania. (See Tr., p. 21.) Mr. Baiera testified that he completed "an ARD program," served a probationary period, and then the charge was expunged from his record. (Tr., p. 35.) Mr. Baiera stated that because the charge was expunged, he was "never actually convicted of that DUI." (*Id.*) Mr. Baiera's second alcohol-related incident during his college years also occurred in 2008, when he was visiting friends at the Baldwin Wallace campus in Berea, Ohio. (See Tr., p. 22.) Mr. Baiera testified that even though he was twenty-one (21) years old at the time, he had possession of an open container of alcohol in an area in which open containers were prohibited. (See *id.*) He stated that he received a citation for this infraction. (Tr., p. 50.)

On August 8, 2008, the Ohio Board of Nursing granted a license to Mr. Baiera to practice as a registered nurse. (State Exhibit 5.) Mr. Baiera stated that he reported the Pittsburgh DUI on his application. (See Tr., p. 50.) In 2009, Mr. Baiera became licensed in North Carolina. (See Tr., p. 11.) In 2010, Mr. Baiera stated that he was granted licenses to practice in Nevada and the Virgin Islands, and a temporary license to practice in Minnesota. (Tr., p. 12.) Mr. Baiera testified that he worked as a traveling nurse during this time period. (See Tr., p. 13.)

In March 2010, during the timeframe he was working as a traveling nurse in Nevada, Mr. Baiera was again charged with DUI. (See Tr., p. 68.) In a statement to the Board, Mr. Baiera wrote, "After working a full day at the hospital and then going out to meet friends at a nearby bar, I decided to drive home because it was late and I was tired. [. . .] While driving home and stopped at a traffic light, I leaned my head back and [dozed] off while at the light. After not proceeding at the traffic light an officer approached from behind me and proceeded to pull me over." (State Exhibit 7, p. 9; see also Tr., p. 29.) Mr. Baiera described his decision to drive that night as "very irresponsible." (State Exhibit 7, p. 9.) He testified, to the best of his knowledge, that his blood alcohol content was .199 at the time of his arrest. (Tr., p. 33.) On June 9, 2011, Mr. Baiera pled "nolo contendere" (no contest) to the charge of Driving While Under the Influence of Intoxicating Liquor in Clark County, Nevada. (State Exhibit 7, p. 2.) He was

ordered to pay a fine or perform 59 hours of community service, attend D.U.I. School and Victim Impact Panel, and he received a thirty (30) day suspended sentence. (State Exhibit 7, p. 2.)

Mr. Balera's next alcohol-related incident occurred in February 2011, during the timeframe he was working as a travelling nurse in California. (See Tr. pp. 24-25.) He described the incident as follows:

A. [...] After trying to take a cab home, I essentially passed out. The cab driver brought me down to where, I guess, all the officers hang out and patrol the nightlife. They brought me into the jail. They did not draw any BAC; they did not charge me. They essentially threw me in a drunk tank, said stay here eight hours; we'll let you go. No fines, no fees, no citations, no charges.

Q. Okay. So you were unconscious when they brought you into the police station?

A. By that time I was conscious.

Q. And you were unconscious because you were intoxicated, right?

A. Correct.

Q. Do you remember how much you drank that day?

A. [...] I don't have an exact count for you, no. [...] I was in town visiting friends who were working in Monterey and we had went out, had maybe a couple drinks at the house, a couple beers, and we went out that night and didn't have that much more to drink, but I think the combination of working, being tired and I think just the whole day, I think, was a combination of that result.

(Id.)

In or around February 2011, Mr. Balera applied for licensure by endorsement in the State of West Virginia. (See Tr., p. 17.) Mr. Balera did not disclose his Pittsburg DUI, the Berea open container citation, or the Monterey incident on his application for licensure in West Virginia. (See Tr., pp. 49-50, 52.) Mr. Balera explained that he did not disclose the Pittsburg DUI because it had been expunged, and did not disclose the Berea open container citation because "it was simply a citation." (Tr., p. 50.) Mr. Balera stated that he was not arrested or convicted of any charges related to the Monterey incident. (Tr., p. 52.)

In May 2011, Mr. Balera enrolled in a Certified Registered Nurse Anesthetist ("CRNA") program in West Virginia. (See Tr., p. 14.) He testified that he left the school after only six (6) weeks because he needed to have an active West Virginia license to complete the program. (See Id.)

On June 23, 2011, the West Virginia Board of Nursing denied Mr. Balera's application for licensure by endorsement because Mr. Balera failed to disclose all of his past alcohol-related incidents. (See State Exhibit 1, p. 4; see Tr., p. 21, 49-50, 52.) The West Virginia Disciplinary Review Committee stated that Mr. Balera could reapply for licensure after one (1) year of documented sobriety, which included proof of negative random urine drug screens. (Id.) Mr. Balera declined to reapply for licensure in West Virginia. (See Tr., p. 21.)

On or about August 18, 2011, Mr. Baiera submitted an application to reactivate his lapsed license in Ohio. (See State Exhibits 7, 7a.) On the application, Mr. Baiera checked "Yes," to the following questions:

[H]ave you been convicted of, found guilty of, pled guilty to, pled no contest to [. . .] for any of the following crimes. This includes crimes that have been expunged if the crime has a direct and substantial relationship to nursing practice.

[. . .]

b. A misdemeanor in Ohio, another state, commonwealth, territory, province or country. This does not include traffic violations unless they are DUI/OVI.

[. . .]

c. Have you ever, for any reason, been denied an application, issuance, or renewal for licensure/certification, registration, or the privilege of taking an examination, in any state (including Ohio), territory, province, or country?

(State Exhibit 7.)

With his application for reinstatement, Mr. Baiera included a copy of a docket sheet as evidence of his no contest plea to the Nevada DUI charge; the Criminal Complaint regarding the Nevada DUI charge; the letter from the West Virginia Board denying his application for licensure by endorsement; a letter from Jack Stringfellow, Certified Advanced Alcohol & Drug Counselor; and statements regarding the Monterey incident in February 2011, the denial of his West Virginia application for licensure by endorsement, and the Nevada DUI. (State Exhibit 7, pp. 2-10.) The Board reinstated Mr. Baiera's license to practice nursing in Ohio as a registered nurse on August 18, 2011. (See State Exhibit 5.)

On November 18, 2011, the Ohio Board issued to Mr. Baiera the Notice of Opportunity for Hearing that is the subject of this case. (See State Exhibit 1.) On November 28, 2011, the Board received Mr. Baiera's request for hearing. (State Exhibit 2.)

Mr. Baiera testified that when he submitted his application to renew his license in Nevada he included "a full description of any legal matter that I've had, including DUIs or anything like that," and "counseling forms showing that I sought out counseling, along with any certified court documents that I had from any justice department." (Tr., p. 19.) Mr. Baiera stated that in February 2012, he entered into an agreement with the Nevada Board of Nursing for a one-year probationary period; which included random drug and alcohol urine tests. (Tr., p. 18.) Mr. Baiera testified that he has tested negative for drugs and alcohol on all screens. (Tr., p. 20.)

Analysis

From the record now before the Board, it appears that there is a preponderance of evidence Mr. Baiera's Application for Licensure by Endorsement to Practice as a Registered Professional Nurse in the State of West Virginia has been denied. (State Exhibit 1, p. 4.)

Mr. Baiera has been forthright with the Ohio Board regarding his alcohol-related incidents, dating back to 2008. (See State Exhibit 7.) Mr. Baiera testified that he contacted Dr. Jack Stringfellow, a certified addictions counselor. (See Tr., p. 26.) Mr. Baiera stated, "I sought him out on my own volition [. . .] [R]ealizing that I had multiple alcohol offenses, [I thought] that it would be best to speak with a counselor and get a professional opinion and make sure that I did not have a problem with alcohol, or I guess where I put myself into danger." (Tr. p. 26.) Mr. Baiera did not express remorse for putting the public in danger when he drove after drinking. Dr. Stringfellow wrote in his letter that he met with Mr. Baiera on "repeated occasions," and that he "observed no evidence of current substance dependence." (Respondent Exhibit E.) Mr. Baiera testified that he abstains from drinking. (Tr., p. 36.)

Mr. Baiera provided two (2) letters of recommendation from former supervisors. (Respondent Exhibits C, D.) Sharon Greenwood, RN, MSN, Department Manager at Sunrise Hospital in Las Vegas, Nevada, wrote, "Vince does an excellent job in his position and is an asset to our organization. He is extremely organized, calm and level headed." (Respondent Exhibit C.) Leslie Harris, supervisor at Schneider Regional Hospital in St. Thomas, Virgin Islands, wrote that Mr. Baiera was a "team player," and resourceful. (Respondent Exhibit D.)

Mr. Baiera testified that he wants to return home to the Ohio area, and attend school to become a Certified Registered Nurse Anesthetist. (Tr., p. 62.) He stated that he has learned that being dishonest about his mistakes is "as bad as doing the crime or making the mistake." (Tr., p. 64.)

Mr. Baiera was involved in four (4) alcohol-related incidents between 2008 and 2011. He did seek the advice of an addictions counselor, but provided very little information about the substance of the counseling or any treatment he may have received. (See e.g., Respondent Exhibit E.) Mr. Baiera testified that he did not complete a full chemical dependency evaluation with Dr. Stringfellow. (Tr., p. 28.) Both the West Virginia Board and the Nevada Board have taken action against Mr. Baiera's application for, and license to practice in those states. (See State Exhibit 1, p. 4; see Tr., p. 48.)

The State requested that Mr. Balera's license be subject to a three-year probationary period, drug screening, and evaluation by a psychiatrist specializing in addiction. (Tr., p. 73.) The State also requested that Mr. Balera's license be subject to temporary practice restrictions. (Id.) The Respondent agreed that random alcohol screening would be appropriate. (Tr., p. 76.) The Respondent asked that any time he spent in nurse anesthetist school be counted as time in practice, should a suspension or probationary period be imposed. (See Tr., p. 79.)

After considering all of the evidence, including the evidence offered in aggravation and mitigation, I recommend that Mr. Balera's license to practice as a registered nurse in Ohio be subject to a stayed suspension with probationary terms and conditions to be determined by the Board, for a period of not less than two (2) years. During his probationary period, Mr. Balera should be subject to terms and conditions established by the Board, which should require Mr. Balera to obtain a chemical dependency evaluation by a Board-approved chemical dependency professional, and to participate in random drug and alcohol screening. Mr. Balera's license should also be subject to temporary practice restrictions prohibiting him from working in unsupervised settings or from supervising other nurses.

Findings of Fact

Having heard the testimony of the witnesses and the oral argument of counsel, and having examined the exhibits admitted into evidence, I make the following findings of fact and conclusions of law. To the extent that any findings of fact constitute conclusions of law, they are offered as such. To the extent that any conclusions of law constitute findings of fact, they are so offered.

1. Respondent Vincent J. Balera has been licensed with the Ohio State Board of Nursing as a Registered Nurse since August 8, 2008.
2. On or about January 1, 2008, Mr. Balera was charged with Driving Under the Influence of alcohol in Pittsburg, Pennsylvania.
3. In or around 2008, in Berea, Ohio, Mr. Balera received a citation for having an open container of alcohol.
4. On or about March 25, 2010, Mr. Balera was charged with Driving Under the Influence of Intoxicating Liquor in Clark County, Nevada.

5. On or about June 9, 2011, Mr. Baiera pled "nolo contendere" to the charge of Driving Under the Influence of alcohol in Clark County, Nevada.
6. In or around February 2011, Mr. Baiera spent the night in the Monterey, California, jail after being found unconscious due to drinking alcohol, in a cab.
7. In or around February 2011, Mr. Baiera submitted an Application for Licensure by Endorsement to the State of West Virginia Board of Examiners for Registered Professional Nurses. Mr. Baiera failed to disclose his 2008 Pittsburg DUI arrest, the 2008 Berea open container citation, or the 2011 Monterey incident on his application.
8. The State has established by at least a preponderance of the evidence that on or about June 23, 2011, the State of West Virginia Board of Examiners for Registered Professional Nurses issued a letter in which Mr. Baiera's Endorsement Application for Licensure to Practice as a Registered Professional Nurse in West Virginia was denied.
9. On or about August 18, 2011, Mr. Baiera submitted an application for reinstatement of his lapsed license to the Ohio Board of Nursing. On the application, Mr. Baiera answered "Yes," to the following questions: [H]ave you been convicted of, found guilty of, pled guilty to, pled no contest to [. . .] for any of the following crimes. This includes crimes that have been expunged if the crime has a direct and substantial relationship to nursing practice. [. . .] b. A misdemeanor in Ohio, another state, commonwealth, territory, province or country. This does not include traffic violations unless they are DUI/OVI. [. . .] c. Have you ever, for any reason, been denied an application, issuance, or renewal for licensure/certification, registration, or the privilege of taking an examination, in any state (including Ohio), territory, province, or country?
10. The State has established by at least a preponderance of the evidence that in a statement to the Board regarding his status in West Virginia, Mr. Baiera indicated that he failed to disclose alcohol-related incidents to the West Virginia Board on a nursing license application.
11. On or about August 18, 2011, the Board reinstated Mr. Baiera's license to practice nursing in Ohio as a registered nurse.
12. Upon finding cause to believe Mr. Baiera had violated provisions of the Nurse Practice Act, the Board of Nursing set forth charges against Mr. Baiera in a notice dated

November 18, 2011. Mr. Baiera timely requested an administrative review of the charges.

Conclusions of Law

1. Because he holds a license as a registered nurse issued by the Ohio Board of Nursing, Respondent Vincent J. Baiera, is subject to the jurisdiction of the Board in actions taken pursuant to Chapter 4723 of the Ohio Revised Code.
2. Upon sufficient cause to believe a licensee of the Board of Nursing has violated a provision of the Nurse Practice Act, the Board is authorized to take action with respect to that licensee's nursing license. Upon his receipt of the Board's charging document, the Respondent timely requested an evidentiary hearing before the Board took any final action based upon the Board's charges. Upon its receipt of Respondent's request for an administrative hearing, the Board set the matter for hearing, in the manner provided for by Chapter 119, ORC (Ohio Administrative Procedure Act), and provided the Respondent with an opportunity to be heard before it took any final action with respect to the Respondent's license as a registered nurse, in the manner provided for by law.
3. Section 4723.28(B)(1), ORC, authorizes the Board to discipline a licensee for denial, revocation, suspension, or restriction of authority to practice a health care occupation, including nursing, for any reason other than a failure to renew, in Ohio or another state or jurisdiction.
4. The Board is authorized to take action against Mr. Baiera's license to practice nursing as a registered nurse where by at least a preponderance of the evidence the State establishes that on or about June 23, 2011, the State of West Virginia Board of Examiners for Registered Professional Nurses issued a letter in which Mr. Baiera's Endorsement Application for Licensure to Practice as a Registered Professional Nurse in West Virginia was denied.
5. Pursuant to Section 4723.28(B), ORC, upon proof that the Respondent has violated a provision of the Nurse Practice Act as set forth in Section 4723.28, ORC, the Board, by a vote of a quorum, may impose one or more of the following sanctions: it may deny, permanently revoke, revoke, suspend, or place restrictions on any nursing license issued by the Board; it may reprimand or otherwise discipline a holder of a nursing license; or it

may impose a fine of not more than five hundred dollars per violation. Upon sufficient proof, as has been shown in this evidentiary proceeding, that the Respondent has violated the provisions of the Nurse Practice Act and rules as concluded by the Hearing Examiner, the Board may implement any of the foregoing disciplinary actions.

Recommendation

Upon sufficient proof that the Respondent, Vincent J. Balera, has violated provisions of the Nurse Practice Act as shown above, it is my recommendation that the Respondent's license to practice nursing as a registered nurse be subject to a stayed suspension with probationary terms and conditions to be determined by the Board, for a period of not less than two (2) years. Within forty-five (45) days of the Board's Order, Mr. Balera should be required to obtain a chemical dependency evaluation by a Board-approved chemical dependency professional, and to participate in random drug and alcohol screening. Mr. Balera's license should also be subject to temporary practice restrictions prohibiting him from working in unsupervised settings or from supervising other nurses. Mr. Balera's stayed suspension, probationary period, and any practice restrictions should also be subject to any other terms, conditions and limitations as determined by the Board.

This is a recommendation only; it is not a final order. Only the Board has the authority to enter a final order in this administrative action. The Board further has the authority to adopt, modify, or reject this recommendation, and this recommendation shall have no legal effect until and unless adopted by the Board, and a final order is issued by the Board as provided in Chapters 4923 and 119 of the Revised Code.

September 14, 2012
Date

Beth A. Lewis
Beth A. Lewis, Attorney at Law
Hearing Examiner, Ohio Board of Nursing

CERTIFICATE OF SERVICE

I certify that the original of this report and recommendation was served upon the Ohio Board of Nursing at its offices in Columbus, Ohio, by hand delivery, on September 14, 2012.

Beth A. Lewis
Beth A. Lewis, Hearing Examiner

Case #11-003546



Ohio Board of Nursing

www.nursing.ohio.gov

17 South High Street, Suite 400 • Columbus, Ohio 43215-7410 • (614) 466-3947

November 18, 2011

NOTICE OF OPPORTUNITY FOR HEARING

Vincent J. Balera, R.N.
2907 Hickory Street
Clinton, Ohio 44216

Dear Mr. Balera:

In accordance with Chapter 119. of the Ohio Revised Code (ORC), you are hereby notified that the Ohio Board of Nursing (Board) proposes under the authority of Section 4723.28, ORC, to deny, permanently revoke, revoke, suspend or place restrictions on your license to practice nursing as a registered nurse; reprimand or otherwise discipline you; or impose a fine of not more than five hundred dollars (\$500.00) per violation for the following reasons:

1. On or about June 23, 2011, the State of West Virginia Board of Examiners for Registered Professional Nurses (West Virginia Board) issued a letter in which your Endorsement Application for Licensure to practice as a registered professional nurse in West Virginia was denied (West Virginia Board 2011 Denial Letter). A *reacted copy of the West Virginia Board 2011 Denial Letter is attached hereto and incorporated herein.* In a statement to the Board regarding your status in West Virginia, you indicate that you failed to disclose alcohol-related incidents to the West Virginia Board on a nursing license application.

Section 4723.28(B)(1), ORC, authorizes the Board to deny a license or otherwise discipline a licensee for denial, revocation, suspension, or restriction of authority to practice a health care occupation, including nursing, for any reason other than a failure to renew, in Ohio or another state or jurisdiction.

Accordingly, the Board is authorized to impose one or more of the sanctions as cited in Section 4723.28 ORC.

You are hereby further informed that, if you timely request a hearing, you are entitled to appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the Board, or you may present your position, arguments, or contentions in writing. At the hearing you may also present evidence and examine witnesses appearing for and against you.

Should you choose to request a hearing, please mail or deliver the request, in addition to any other correspondence regarding this matter, to: Lisa Ferguson-Ramos, Compliance Unit Manager, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410, or to the email address, hearing@nursing.ohio.gov.

CERTIFIED TO BE A TRUE COPY

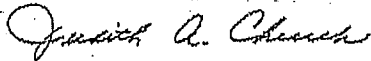
OHIO BOARD OF NURSING

Lisa Ferguson-Ramos
Compliance Records Custodian

Vincent J. Balera, R.N.
Page 2

If the Board fails to receive a request for a hearing within thirty (30) days of the time of mailing of this notice, the Board may, in your absence and upon consideration of the factual and legal allegations set forth in this Notice of Opportunity for Hearing, deny, permanently revoke, revoke, suspend or place restrictions on your license to practice nursing as a registered nurse; reprimand or otherwise discipline you; or impose a fine of not more than five hundred dollars (\$500.00) per violation.

Sincerely,



Judith A. Church, R.N., C.N.P.
Supervising Member

Certified Mail Receipt No. 7011 1150 0002 0937 0528

cc: Michelle T. Sutter, Assistant Attorney General

RECEIVED
JUL 11 1996
STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES
NURSING DIVISION

EXHIBIT C

Summary Action Order, North Carolina Board

BEFORE THE NORTH CAROLINA BOARD OF NURSING
OF THE STATE OF NORTH CAROLINA

In the Matter Involving:

Vincent Julius Baiera

SUMMARY ACTION ORDER

Registered Nurse Certificate # 229439

Pursuant to the authority vested by Article 9A, Chapter 90 of the General Statutes of North Carolina and Article 3A of Chapter 150B-38 of the General Statutes of North Carolina, the North Carolina Board of Nursing (hereafter known as the Board) issues the following ORDER based on action taken in the state of Ohio.

1. Vincent J. Baiera is the holder of RN Certificate #229439 which expires on October 31, 2014.
2. The North Carolina Board of Nursing received information from the Ohio Board of Nursing that indicates Mr. Baiera was issued a Final Adjudication Order on November 16, 2012 based on action taken in the state of Ohio when he provided false information on his endorsement application related to prior alcohol incidents. The adjudication order from Ohio was effective December 11, 2012. As the result of this Order, Mr. Baiera's license to practice nursing was suspended for six (6) months and he was required to comply with certain conditions in order to be considered for reinstatement of his license.
3. North Carolina General Statutes 90-171.37 and Regulation 21 NCAC 38.0217(d) allows the North Carolina Board of Nursing to take **SUMMARY ACTION** against a licensee if a North Carolina licensee holds a license in another jurisdiction and receives action in that jurisdiction. The Board's policies allow the North Carolina Board of Nursing to summarily impose the same or lesser disciplinary action on a licensee's license upon receipt of the discipline action in another jurisdiction. Actions may be taken based on this policy if the Findings of Fact in the Final Order is found to be a violation of the North Carolina Nursing Practice Act.
4. Therefore, the North Carolina RN license of Vincent J. Baiera is hereby **SUSPENDED**, and Mr. Baiera **MUST IMMEDIATELY CEASE AND DESIST** from the practice of nursing in North Carolina.
5. In accordance with Chapter 150B of the General Statutes, the licensee is entitled to a "Show Cause" Hearing before a majority of the members of the Board to determine why the Board should not take further action.
6. The licensee is entitled to be represented by counsel and to present evidence and witnesses/testimony on the licensee's behalf.
7. Pursuant to North Carolina General Statute Section 150B-40(d), the licensee may not communicate, directly or indirectly, with any individual member of the Board about this matter. If the licensee or legal representative has questions, they should contact Donna H. Mooney, RN, Manager of Discipline Proceedings.
8. In the event the Board determines the Licensee has violated any of the conditions of this ORDER, and the Licensee disputes that such a violation of the conditions

CERTIFIED TRUE COPY

**BEFORE THE NORTH CAROLINA BOARD OF NURSING
OF THE STATE OF NORTH CAROLINA**

In the Matter Involving:

Vincent Julius Baiera

SUMMARY ACTION ORDER

Registered Nurse Certificate # 229439

has occurred, then the Licensee agrees the Licensee must file such objection in writing with the Board **WITHIN TEN (10) BUSINESS DAYS** of the date of the notice of the violations to the Licensee. The notice to the Board shall contain with specificity the violations disputed.

9. When the Licensee has properly filed notice of objection with the Board, then the Licensee will be provided a Hearing before the Board at the next scheduled Board meeting for which appropriate notice can be provided, or scheduled by consent of the parties. A Show Cause Hearing for a Summary Action is limited to:
 - a) showing that you are the person who had the action taken in the state of Ohio
 - b) that the action, had it occurred in North Carolina, would also be a violation of our Nursing Practice Act
 - c) that the sanction that was imposed is consistent with the sanction that would be imposed if the act had occurred in North Carolina.
10. If the licensee is not contesting the violations contained in this ORDER, the licensee may request to appear before the Licensure Committee to petition for reinstatement of the license.
11. If the licensee is disputing the fact that the violations as alleged did occur, the licensee must file a written objection with the Board within ten (10) business days of the date of the notice of violations to Vincent Julius Baiera. The notice must contain with specificity the violations being disputed.
12. When the licensee has properly filed notice of objections with the Board, then the licensee will be notified of the exact date and time for the "Show Cause" Hearing. The Hearing will be held at the next scheduled Board meeting for which appropriate notice can be provided, or scheduled by consent of the parties.
13. Failure to return the written objection within the designated time period will be construed to mean the licensee is not contesting the matter and all further proceedings to which the licensee is otherwise entitled by law are hereby waived.

The license will then remain suspended until the licensee requests in writing the opportunity to appear before the Licensure Committee to petition for reinstatement.
14. This ORDER to Suspend will be placed in the licensee's file and becomes a public record pursuant to the North Carolina Public Record Statute G.S. Chapter 132 and Board policy.

CERTIFIED TRUE COPY

BEFORE THE NORTH CAROLINA BOARD OF NURSING
OF THE STATE OF NORTH CAROLINA

In the Matter Involving:

Vincent Julius Balera

SUMMARY ACTION ORDER

Registered Nurse Certificate # 229439

15. By not contesting the violations contained in this ORDER, the licensee is waiving the rights to a "Show Cause" Hearing, to challenge the validity of this ORDER and to any further proceedings to which the licensee may be entitled by law.
16. By contesting the violations contained in this ORDER, the licensee is requesting a "Show Cause" Hearing.

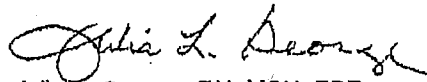
The licensee understands that a written objection with the specific violations/charges being disputed must be received within ten (10) business days of the date of this notice.

When the licensee has properly filed notice of objection with the Board, then the Licensee will be provided a Hearing before the Board at the next scheduled Board meeting for which appropriate notice can be provided, or scheduled by consent of the parties.

17. In accordance with G.S. 90-171.27(d) and Board policy derived therefrom, a fee may be assessed for disciplinary matters. A Show Cause Hearing is considered a discipline action.

FAILURE TO RETURN THE ATTACHED PAGE WITHIN TEN (10) BUSINESS DAYS WILL RESULT IN THE LICENSEE WAIVING ALL RIGHTS TO CHALLENGE THE VALIDITY OF THIS ORDER OR TO ANY OTHER PROCEEDINGS TO WHICH THE LICENSEE MAY OTHERWISE BE ENTITLED BY LAW.

This the 13th day of February, 2013



Julia L. George, RN, MSN, FRE
Executive Director
North Carolina Board of Nursing

CERTIFIED TRUE COPY